

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
NORTHERN DIVISION

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UNITED STATES OF AMERICA,  
Plaintiff,

vs.

JOSHUA CHRISTENSEN,  
Defendant.

MEMORANDUM DECISION AND  
ORDER GRANTING  
DEFENDANT'S MOTION FOR  
EARLY TERMINATION OF  
SUPERVISED RELEASE

Case No. 1:01-CR-38 TS

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This matter is before the Court on Defendant's Motion for Early Termination of Supervised Release. The Court has consulted with the probation office. The probation office is not opposed to the Motion. The government makes a legal objection. The Court grants early termination.

BACKGROUND

On October 24, 2001, Defendant pleaded guilty to Possession of MDMA or Ecstasy with Intent to Distribute. Defendant was sentenced on March 20, 2002, to 64 months custody followed by 36 months supervised release and was ordered to pay a \$100 special

assessment fee. Amended Judgment was entered on April 4, 2004. Defendant was released from the custody of the Bureau of Prisons on September 8, 2005.

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DISCUSSION

If a defendant has completed at least one year of supervised release, § 3583(e) permits the Court to terminate supervised release prior to completion of the entire term, if the Court is satisfied that such action is 1) warranted by the conduct of an offender and 2) is in the interest of justice.<sup>1</sup> In making this determination, the Court must consider many of the factors set forth in 18 U.S.C. § 3553(a), to the extent they are applicable.<sup>2</sup>

The Court has considered these factors, has reviewed the docket and case file, and has consulted with Defendant's supervising probation officer. The Court finds as follows: Defendant has been fully compliant with all the terms of his supervised release and directives of the probation office. He has completed substance abuse treatment, has undergone periodic testing, and has had no violations. The probation office is not opposed to the early termination of supervision and discharge of supervised release.

The government objects on the ground that Defendant was sentenced under 21 U.S.C. § 841(b)(1)(C) which provides:

Notwithstanding section 3583 of Title 18, any sentence imposing a term of imprisonment under this paragraph shall . . . impose a term of supervised release of at least 3 years in addition to such term of imprisonment.

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<sup>1</sup>18 U.S.C. § 3583(e).

<sup>2</sup>*Id.* (directing that the court consider factors set forth in § 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)).

The government argues that as this statute creates a mandatory minimum term of supervised release, the term should not be reduced. The government does not argue regarding the Defendant's specific conduct on supervised release. Because the government's argument is a legal argument, no hearing is required.<sup>3</sup>

The Court has previously held that, notwithstanding 21 U.S.C. § 841(b)(1)(C), courts retain the authority under 18 U.S.C. § 3583(e) to terminate a sentence of supervised release under § 3583(e)(1).<sup>4</sup> The general holding that Courts retain the authority to terminate a sentence of supervised release has been adopted by two other judges in this district.<sup>5</sup>

Based on the Court's findings above, and on consideration of the applicable § 3553(a) factors, the Court finds that early termination of Defendant's term of supervised release is both warranted by the conduct of the Defendant and is in the interest of justice.

#### CONCLUSION

Based upon the above, it is hereby

ORDERED that Defendant's Motion for Early Termination of Supervised Release (Docket No. 78) is GRANTED; it is further

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<sup>3</sup>Fed. R. Crim. P. 32.1(c) (hearing required to modify conditions of supervised release unless the relief sought is favorable to defendant, does not extend the term of his supervised release and "an attorney for the government has received notice of the relief sought, has had reasonable opportunity to object, and has not done so.").

<sup>4</sup>*United States v. Manolis*, 2008 WL 630216 \*1 (D. Utah March 7, 2008) (applying reasoning construing § 841(b)(1)(B) in *United States v. McClister*, 2008 WL 153771 (D. Utah Jan. 14, 2008) to § 841(b)(1)(C)).

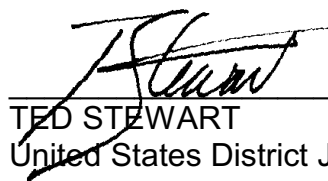
<sup>5</sup>*United States v. King*, 551 F.Supp.2d 1298 (D. Utah 2008); *United States v. Beagley*, 2008 WL 2323905 (D. Utah June 5, 2008).

ORDERED that Defendant's term of supervised release shall be terminated effective immediately.

SO ORDERED.

DATED this 21st day of July, 2008.

BY THE COURT:

A handwritten signature in black ink, appearing to read "T. Stewart", is written over a horizontal line. Below the line, the name "TED STEWART" and the title "United States District Judge" are printed in a black, sans-serif font.

TED STEWART  
United States District Judge